

**FILED  
CLERK**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

10:51 am, Dec 15, 2022

**U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

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:  
UNITED STATES OF AMERICA, :  
:  
v. : 16-CR-403-25 (GRB)  
:  
EVER FLORES, : October 7, 2021  
:  
:  
Defendant. : Central Islip, NY  
:  
:  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA  
BEFORE THE HONORABLE  
VISITING UNITED STATES CIRCUIT JUDGE  
JOSEPH F. BIANCO

APPEARANCES:

For the Government: BREON PEACE, ESQ.  
U.S. ATTORNEY  
BY: JUSTINA GERACI, ESQ.  
ASSISTANT U.S. ATTORNEY  
271 Cadman Plaza East  
Brooklyn, New York 11201

For the Defendant: SUSAN MARCUS, ESQ.  
29 Broadway, Suite 1412  
New York, NY 10006

Court Transcriber: ARIA SERVICES, INC.  
c/o Elizabeth Barron  
274 Hovey Road  
Milo, ME 04463  
Aria@leinen.net

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1 THE CLERK: Criminal cause for guilty plea  
2 in 16-CR-403, United States of America v. Ever Flores.

3 Counsel, please state your appearances for  
4 the record.

5 MS. GERACI: Good afternoon, your Honor.  
6 Justina Geraci and Megan Farrell for the government.

7 THE COURT: Good afternoon.

8 MS. MARCUS: Good afternoon. Susan Marcus  
9 on behalf of Ever Flores.

10 THE COURT: Good afternoon, Ms. Marcus.

11 Mr. Flores is present. We have the Spanish  
12 interpreter who is on staff here interpreting for Mr.  
13 Flores. I would just ask that she identify herself for  
14 the record.

15 THE INTERPRETER: Good afternoon, your  
16 Honor. Maya Gray, Spanish interpreter.

17 THE COURT: Good afternoon, Ms. Gray.

18 Ms. Marcus, my understanding is that your  
19 client has an application today?

20 MS. MARCUS: Yes. He wishes to withdraw his  
21 previously-entered plea of not guilty and enter a plea  
22 of guilty today.

23 THE COURT: To Count 1 of superseding  
24 indictment S-7?

25 MS. MARCUS: Yes.

1 THE COURT: And to racketeering acts,  
2 specifically 18(b) and 21?

3 MS. MARCUS: Yes.

4 THE COURT: Is that correct, Mr. Flores?

5 THE DEFENDANT: Yes.

6 THE COURT: Hold on one second. Okay, Mr.  
7 Flores, before I can accept your guilty plea, I'm going  
8 to ask you a series of questions so that I can  
9 establish to my satisfaction that you wish to plead  
10 guilty today because you are guilty and not for some  
11 other reason. I also need to establish that you know  
12 what rights you're giving up by pleading guilty, so I'm  
13 going to ask you a series of questions. If you don't  
14 understand one of my questions, let me know and I'll  
15 rephrase it. If you're having trouble understanding  
16 through the interpreter at any point, raise your hand  
17 right away and we'll fix that, or if you want to speak  
18 to Ms. Marcus at any time for any reason, let me know  
19 and I'll give you as much time as you need to speak to  
20 her, okay?

21 THE DEFENDANT: I agree.

22 (Defendant is sworn.)

23 THE COURT: You can be seated. Having been  
24 sworn, Mr. Flores, your answers to my questions will be  
25 subject to the penalties of perjury or of making a

1 false statement if you do not answer truthfully.

2 Do you understand that?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: Can you state your full name for  
5 the record?

6 THE DEFENDANT: Ever Flores.

7 THE COURT: How old are you, Mr. Flores?

8 THE DEFENDANT: 26 years old.

9 THE COURT: What's your date of birth?

10 THE DEFENDANT: 31<sup>st</sup> of December, '94.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: I finished twelfth grade.

13 THE COURT: Are you now or have you recently  
14 been under the care of a doctor or psychiatrist?

15 THE DEFENDANT: No.

16 THE COURT: Have you ever been hospitalized  
17 or treated for any mental illness or any type of  
18 addiction, including drug or alcohol addiction?

19 THE DEFENDANT: No.

20 THE COURT: Have you taken any drugs,  
21 medicine, or pills, or any alcoholic beverages in the  
22 last 48 hours?

23 THE DEFENDANT: No.

24 THE COURT: Is your mind clear today?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand what you're  
2 about to do today?

3 THE DEFENDANT: Yes.

4 THE COURT: Do either counsel have any doubt  
5 as to the defendant's competence to plead at this time?

6 MS. GERACI: No, your Honor.

7 MS. MARCUS: No, your Honor.

8 THE COURT: On the basis of Mr. Flores'  
9 responses to my questions today as well as my  
10 observations of his demeanor here in the courtroom and  
11 the representations of counsel, I find that he is fully  
12 competent to enter an informed plea at this time.

13 Mr. Flores, have you had sufficient time to  
14 discuss this case with your attorney, including any  
15 possible defenses that you might have to this charge  
16 that you're pleading guilty to?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you satisfied with your  
19 attorney's representation of you in this case?

20 THE DEFENDANT: Yes.

21 THE COURT: I am now going to describe to  
22 you certain rights that you have under the Constitution  
23 and laws of the United States. You're giving up these  
24 rights today by pleading guilty, so please listen  
25 carefully.

1           At a trial -- excuse me. Under the  
2 Constitution and laws of the United States, you're  
3 entitled to a speedy and public trial by a jury on the  
4 charges contained in superseding indictment S-7.

5           Do you understand that?

6           THE DEFENDANT: Yes.

7           THE COURT: At the trial, you would be  
8 presumed to be innocent. The government would have the  
9 burden of proof and the government would be required to  
10 prove your guilt by competent evidence beyond a  
11 reasonable doubt before you could be found guilty.

12          Do you understand that?

13          THE DEFENDANT: Yes.

14          THE COURT: A jury of 12 people would have  
15 to agree unanimously that you were guilty and you would  
16 not have to prove that you were innocent if you were to  
17 go to trial.

18          Do you understand that?

19          THE DEFENDANT: Yes.

20          THE COURT: At that trial and at every stage  
21 of your case, you would be entitled to be represented  
22 by a lawyer. If you could not afford a lawyer, one  
23 would be appointed at public expense free of cost to  
24 represent you at each and every stage of the criminal  
25 proceeding.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: During the trial, the witnesses  
4 for the government would have to come to the courtroom  
5 and testify in your presence. Your lawyer could cross-  
6 examine the witnesses for the government, your lawyer  
7 could object to evidence offered by the government, and  
8 your lawyer could offer evidence on your own behalf, if  
9 you so desired. In connection with offering your own  
10 evidence, you would have the right to have subpoena  
11 issues or other processes used to compel witnesses to  
12 come to court and to testify in your defense.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: At the trial, although you would  
16 have the constitutional right to testify if you chose  
17 to do so, you would also have the constitutional right  
18 not to testify. If you decided not to testify, no one,  
19 including the jury, could draw any adverse inference or  
20 suggestion of guilt from the fact that you did not  
21 testify.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: If you're convicted at a trial,  
25 you would have the right to appeal the jury's verdict.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Even now, as you're offering to  
4 enter this guilty plea, you have the right to change  
5 your mind, continue with your plea of not guilty, and  
6 go to trial on the charges against you in the  
7 indictment.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: If you plead guilty and if I  
11 accept your plea, you will give up your right to a  
12 trial and all the other rights that I've just discussed  
13 with you, other than your right to an attorney because  
14 obviously, you have the right to an attorney regardless  
15 of whether or not you plead guilty. But I want to make  
16 sure you understand that once you plead guilty, there  
17 will be no trial, and I will enter a judgment of  
18 guilty, and the Court will sentence you on the basis of  
19 your guilty plea, after it has considered what's called  
20 a presentence report and whatever submission the Court  
21 receives from your lawyer and from the government, both  
22 in writing and orally, at the time of your sentencing.  
23 There will also be no appeal to the higher court on the  
24 question of whether you did or did not commit the crime  
25 you're pleading guilty to.



1 Do you understand that?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: If you plead guilty, you will  
4 also have to give up your right not to incriminate  
5 yourself because in a few minutes, I'm going to ask you  
6 questions about what you did in order to satisfy myself  
7 that you are guilty as charged, and you will have to  
8 admit and acknowledge your guilt under oath.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Flores, are you willing to  
12 give up your right to a trial and the other rights I've  
13 just discussed with you?

14 THE DEFENDANT: Yes.

15 THE COURT: I'm now just going to -- I know  
16 you've gone over the indictment and the charges that  
17 you're pleading guilty to today with Ms. Marcus, but  
18 I'm just going to give you a summary of the charge that  
19 you're pleading guilty to, to make sure you understand.

20 As you know, Count 1 charges you with  
21 participating in the racketeering activities of the MS-  
22 13 gang through a pattern of racketeering.

23 Specifically for purposes of your plea here today, it  
24 charges you with racketeering acts 18(b), the murder of  
25 Dewan Stacks (ph) on October 13<sup>th</sup>, 2016, and

1 racketeering act 21, which charges you with  
2 participating in a conspiracy to distribute marijuana  
3 and cocaine between April of 2016 and October of 2017,  
4 on behalf of the gang.

5 Do you understand in summary, that's what  
6 you're charged with in Count 1?

7 THE DEFENDANT: Yes.

8 THE COURT: I will now summarize the  
9 elements of that crime that the government would have  
10 to prove to a jury beyond a reasonable doubt before you  
11 could be found guilty. Obviously, you're giving up  
12 your right to have them prove these things to the grand  
13 jury, so I just want to make sure you understand what  
14 they would otherwise have to prove.

15 First, they would have to prove that the  
16 racketeering enterprise existed in this case, that the  
17 MS-13 gang existed. They would have to prove that that  
18 gang is involved in racketeering activity, which  
19 includes murder, attempted murder, and similar acts.  
20 They would have to prove that that enterprise affected  
21 interstate or foreign commerce in some way. Next, they  
22 would have to prove that you knowingly became a member  
23 of that enterprise.

24 Next, they would have to prove that you  
25 knowingly participated in the operation of the

1 activity, the racketeering activity of that enterprise.  
2 Next, they would have to prove that you did so through  
3 what's called a pattern of racketeering. Under federal  
4 law, they have to establish that you participated in a  
5 pattern of racketeering.

6 To prove that, they would have to show at a  
7 minimum at least two separate racketeering acts that  
8 you were involved in, in furtherance of the gang's  
9 activities. For each racketeering act, they have to  
10 prove all of the elements of that act to the jury  
11 beyond a reasonable doubt. So in your situation, they  
12 would have to first prove the elements under New York  
13 Penal Law. They would have to prove that on October  
14 13<sup>th</sup>, 2016, you with the intent to cause the death of  
15 another person, specifically Mr. Stacks, knowingly and  
16 intentionally caused his death, in violation of New  
17 York Penal Law Sections 125.25(1) and Section 20. Let  
18 me just read those statutes, those laws to you.  
19 They're very short and very clear.

20 The murder statute under New York Law  
21 states, "A person is guilty of murder in the second  
22 degree when, with the intent to cause the death of  
23 another persons, he causes the death of such person or  
24 of a third person."

25 They charge you under Section 20 of the New

1 York Penal Law, which is aiding and abetting in a  
2 murder. That states, "When one person engages in  
3 conduct which constitutes an offense, in this case  
4 murder, another person is criminally liable for such  
5 conduct when acting with the mental culpability  
6 required for the commission of the murder, he solicits,  
7 requests, commands, importunes, or intentionally aids  
8 such person to engage in such conduct."

9 So they would have to prove these elements  
10 of murder beyond a reasonable doubt to the jury for you  
11 to be found guilty of that racketeering act. Then they  
12 would have to separately prove the elements of  
13 racketeering act 21, conspiracy to distribute cocaine  
14 and marijuana, in violation of the federal narcotics  
15 laws.

16 The elements for that particular  
17 racketeering act are first, that an unlawful agreement  
18 between two or more individuals who were not working at  
19 the direction of law enforcement, that an agreement  
20 between two or more individuals to distribute marijuana  
21 and cocaine existed, that you knowingly joined in that  
22 conspiracy, in that agreement for the purpose of  
23 distributing cocaine and marijuana, and they would have  
24 to prove that it was done for remuneration or money,  
25 that the distribution conspiracy was to raise money.

1           So they would have to prove the elements of  
2 those racketeering acts in order for you to be found  
3 guilty of this count. They would have to prove the  
4 other elements that I described to you for the  
5 racketeering statute more generally. All of those  
6 things they would have to prove beyond a reasonable  
7 doubt to a jury, and they would similarly have to prove  
8 that at least some of the activities of the gang took  
9 place here in the Eastern District of New York, which  
10 includes Long Island. They would have to prove that  
11 the acts occurred on or about the dates that are  
12 alleged in the indictment.

13           I know that was a long summary but do you  
14 understand that that's in summary what the government  
15 would have to prove to the jury beyond a reasonable  
16 doubt, and that by pleading guilty today, you're giving  
17 up your right to have them do so.

18           Do you understand that?

19           THE DEFENDANT: Yes, I understand.

20           THE COURT: I'm now going to review with you  
21 the maximum penalties as well as any mandatory minimum  
22 penalties for this crime you're pleading guilty to.

23           Count 1, the count you're pleading guilty to  
24 charging a violation of Section 1962(c), the  
25 racketeering statute of Title 18, carries a maximum

1 term of imprisonment of life. There is no minimum term  
2 of imprisonment. The minimum term of imprisonment is  
3 zero years.

4           There is a maximum supervised release term  
5 of five years that would follow any term of  
6 imprisonment. There are conditions attached to  
7 supervised release and if you violate any of those  
8 conditions, you could be sentenced to up to five years  
9 additional time in jail, without being given credit for  
10 prerelease imprisonment or for time that was previously  
11 served on post-release supervision.

12           You're also subject to a maximum fine of the  
13 greater of \$250,000 or twice the gross gain or loss  
14 caused by the criminal enterprise. You're also subject  
15 to having to pay restitution to the victims of the  
16 crime you're pleading guilty to, in an amount to be  
17 determined by the Court at sentencing. In the case of  
18 murder, the restitution goes to the victim's family,  
19 and restitution under this count is mandatory. There  
20 is a \$100 mandatory special assessment. In addition,  
21 by pleading guilty, you are subjecting yourself to  
22 removal from the United States, which I'll discuss more  
23 with you in a moment.

24           Do you understand that those are the maximum  
25 penalties as well as any mandatory minimum penalties

1 for the crime that you're pleading guilty to today?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you a United States citizen?

4 THE DEFENDANT: No.

5 THE COURT: I just want to emphasize to you  
6 that, again, as I stated a moment ago, by pleading  
7 guilty today, you're subjecting yourself to removal  
8 from the United States. Removal for the crime that  
9 you're pleading guilty to is mandatory. So once you're  
10 done serving your sentence and put into removal  
11 proceedings, you're not going to be able to try to come  
12 back to get your guilty plea back because you don't  
13 want to be removed from the United States. I just want  
14 to be sure that you understand that.

15 Do you understand that?

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: The next thing I want to explain  
18 to you is what the sentencing procedure will be. It's  
19 important before you plead guilty today that you  
20 understand what the procedure will be. I'm sure Ms.  
21 Marcus has discussed this with you but, again, I'm  
22 going to give you a basic summary.

23 The first thing you have to understand is  
24 that parole does not exist in the federal system. So  
25 once you're sentenced, you will not be released from

1 prison any earlier on parole.

2           The next thing you should understand is that  
3 the determination of what sentence you'll receive is  
4 made by the Court and only the Court. Nothing that  
5 your lawyer told you is binding on the Court, nothing  
6 that the government lawyer might have told you is  
7 binding on the Court. As we sit in this courtroom  
8 today, nobody knows what your sentence is going to be.  
9 As I said, you'll be sentenced by the Court based upon  
10 the presentence report and the submissions and  
11 arguments by both sides in connection with your  
12 sentencing.

13           The next thing you should understand is that  
14 the current state of the law is that before the Court  
15 imposes sentence, it is required to consider a number  
16 of factors about the case. There's a list of factors  
17 that are contained in the statute. I'm not going to  
18 repeat the whole list for you but for example, one of  
19 the factors is the nature and the circumstances of the  
20 crime. Another factor is your history and  
21 characteristics as a person, whether they be positive  
22 or negative. There are other factors as well.

23           One of the other factors I do want to  
24 mention is something called the sentencing guidelines.  
25 The sentencing guidelines are as the name suggests, a



1 set of guidelines that takes into account any criminal  
2 history that you might have, as well as the relevant  
3 criminal conduct that you have committed in this case,  
4 and then it sets forth a range of imprisonment within  
5 which you could be sentenced. I emphasize the word  
6 "could" because these guidelines are not mandatory,  
7 they are only advisory. Therefore, the Court is not  
8 required to impose a sentence within whatever the  
9 applicable range may turn out to be. The Court can  
10 sentence you above that range or below that range,  
11 depending upon how it weighs all the factors that it is  
12 required to consider and balance under the law.

13 Finally, whatever sentence the Court imposes  
14 in this case and no matter how happy or unhappy you may  
15 be with that sentence, you may not withdraw or get back  
16 your guilty plea. In other words, while you may appeal  
17 the sentence itself to the extent you have not waived  
18 your right to appeal in your plea agreement with the  
19 government, you may not undue your being found guilty  
20 by virtue of your plea here today.

21 Do you understand that?

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: Do you have any questions that  
24 you'd like me to answer?

25 THE DEFENDANT: No.

1           THE COURT: Let me just go over the plea  
2 agreement with you. I have the original which we'll  
3 mark as Court Exhibit 1 with signatures on the last  
4 page.

5           Did you sign this plea agreement today in  
6 the presence of Ms. Marcus?

7           THE DEFENDANT: Yes.

8           THE COURT: Was it translated for you word  
9 for word by a Spanish interpreter before you signed the  
10 agreement?

11          THE DEFENDANT: Yes.

12          THE COURT: Let me just confirm with Ms.  
13 Marcus. It says Ms. Bonea did translate it for him?

14          MS. MARCUS: Yes.

15          THE COURT: Did you discuss this agreement  
16 with your attorneys before you signed it, Mr. Flores?

17          THE DEFENDANT: Yes.

18          THE COURT: Did you understand it before you  
19 signed it?

20          THE DEFENDANT: Yes.

21          THE COURT: Mr. Talkin is the learned  
22 counsel in this?

23          MS. MARCUS: I am learned counsel.

24          THE COURT: Okay, sorry, I got that  
25 reversed.

1 MS. MARCUS: That's okay.

2 THE COURT: But he's been involved obviously  
3 even to this stage or --

4 MS. MARCUS: He has been involved but due to  
5 the nature of the case --

6 THE COURT: That's fine. I just wanted to  
7 ask him whether he's also satisfied with Mr. Talkin's  
8 representation in this case because I neglected to ask  
9 him that before. But since Mr. Talkin was involved in  
10 the case, I'm going to ask him that as well.

11 Are you also satisfied with Mr. Talkin's  
12 representation of you in this case?

13 THE DEFENDANT: Yes.

14 THE COURT: I'm just going to highlight a  
15 few things from the agreement, again just to make sure  
16 you understand. I know you discussed this with Ms.  
17 Marcus and you read the agreement through the  
18 interpreter.

19 In paragraph 2, it does contain the  
20 calculation of the advisory guideline range. I just  
21 want to emphasize what I said to you a moment ago. The  
22 Court has an obligation to determine what the range is.  
23 It's possible that the range could be different than  
24 the one in the agreement, and whatever the range turns  
25 out to be, whether it's the same or whether it's

1 different, whatever it turns out to be, as I said a  
2 moment ago, it's not binding on the Court and the Court  
3 can sentence you above or below whatever the range  
4 turns out to be.

5 Do you understand that?

6 THE DEFENDANT: Yes, I understand.

7 THE COURT: In paragraph 4, you agree not to  
8 file an appeal or otherwise challenge by petition  
9 pursuant to Section 2255 or any other provision the  
10 conviction or the sentence, in the event that the Court  
11 imposes a term of imprisonment of 405 months or below.  
12 In other words, what that means is that if the Court  
13 sentences you to 405 months in jail or anything less  
14 than 405 months in jail, you're giving up your right to  
15 appeal or otherwise challenge in any way the conviction  
16 or the sentence in this case.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you waiving that right  
20 knowingly and voluntarily?

21 THE DEFENDANT: Yes.

22 THE COURT: Does this agreement constitute  
23 your complete and total agreement with the government?

24 THE DEFENDANT: Yes.

25 THE COURT: Has anyone offered you any

1 inducement or threatened or forced you to enter into  
2 this plea agreement or to plead guilty today?

3 THE DEFENDANT: No.

4 THE COURT: Has anyone made any promise to  
5 you as to what your sentence is going to be?

6 THE DEFENDANT: No.

7 THE COURT: Ms. Marcus, do you know of any  
8 valid defense that would prevail at trial, or do you  
9 know of any reason why your client should not be  
10 permitted to plead guilty today?

11 MS. MARCUS: No, your Honor.

12 THE COURT: At this point, Mr. Flores, I  
13 need you to tell me in your own words what you did that  
14 makes you guilty of Count 1 of the superseding  
15 indictment. Just tell me what you did.

16 THE DEFENDANT: Good afternoon. In 2016, I  
17 joined the sailors 3 (ph) of the MS-13. The MS-13 is  
18 an organization that has leaders and rules. On October  
19 13, 2013, I joined --

20 THE COURT: Wait, say that date again?

21 THE DEFENDANT: On the 13<sup>th</sup> of October, 2016,  
22 I helped other members of the MS-13 to commit the  
23 murder that we thought was from a rival gang. I  
24 participated in this to increase my status in the gang.  
25 In September, 2016 and January, 2017, I and other

1 members of MS-13 sold marijuana and cocaine to help  
2 members of the MS-13, including members of MS-13 in El  
3 Salvador. I agreed with other members of MS-13 to  
4 commit these crimes, knowing what I was doing at that  
5 time. I knew it was wrong and that it was against the  
6 law. Thank you.

7 THE COURT: Thank you. The Court needs -- I  
8 know you had some notes there that you were referring  
9 to and that's fine, but the Court is required to make  
10 sure that it's in your own words and that you're not  
11 just reading from notes. So I'm just going to ask you  
12 to put that paper aside and I'm just going to ask you  
13 some followup questions. Again, it's covering some of  
14 the same things that you just talked about, but I'm  
15 just going to ask you some additional questions.

16 Tell me again, approximately when did you  
17 join the MS-13 gang, what year?

18 THE DEFENDANT: Approximately 2016.

19 THE COURT: What clique were you a member  
20 of?

21 THE DEFENDANT: The sailors.

22 THE COURT: Was there a geographic area  
23 around Long Island where they primarily operated out  
24 of?

25 THE DEFENDANT: No, in the whole of Long

1 Island.

2 THE COURT: Let's focus on the murder first,  
3 the racketeering act, the murder of Mr. Stacks on  
4 October 13 of 2016. First of all -- again, if you  
5 don't remember the exact location, can you just tell me  
6 to the best of your memory where that murder took  
7 place, what town?

8 THE DEFENDANT: In Redwood.

9 THE COURT: You and others agreed to murder  
10 Mr. Stacks?

11 THE DEFENDANT: Yes.

12 THE COURT: What was the reason for the  
13 murder?

14 THE DEFENDANT: A problem with rival gang  
15 members.

16 THE COURT: You believed he was a member of  
17 a rival gang?

18 THE DEFENDANT: Yes.

19 THE COURT: What rival gang did you believe  
20 he was a member of?

21 THE DEFENDANT: The Bloods.

22 THE COURT: Just tell me what -- I think you  
23 said you assisted in the murder. Just tell me what  
24 your role was in the murder. What did you do?

25 THE DEFENDANT: We beat him up until he was

1 unconscious.

2 THE COURT: So you participated in beating  
3 him up until he was unconscious?

4 THE DEFENDANT: Yes.

5 THE COURT: And then what happened? How was  
6 he killed?

7 THE DEFENDANT: He died from the injuries  
8 that we caused.

9 THE COURT: In addition to using your fists,  
10 were there any weapons used besides that?

11 THE DEFENDANT: We used machetes and bats.

12 THE COURT: Then with respect to the  
13 conspiracy to distribute marijuana and cocaine between  
14 September, 2016 and January, 2017, again, just tell me  
15 -- you said you agreed with others to distribute those  
16 drugs on behalf of the gang. Just tell me again, what  
17 did you do? Tell me, what was your role.

18 THE DEFENDANT: It was to raise money for  
19 our own financial expenses.

20 THE COURT: All right, but you sold  
21 marijuana and cocaine on the street?

22 THE DEFENDANT: Yes.

23 THE COURT: And then when you got the money,  
24 what would you do with the money, give it to other gang  
25 members to use for the gang?



1 THE DEFENDANT: Yes. They were in charge of  
2 distributing it for food and housing.

3 THE COURT: I think you mentioned -- you can  
4 correct me if I'm wrong. I thought you said that some  
5 of it went to El Salvador, to the gang in El Salvador.

6 THE DEFENDANT: Yes, that's so. We also  
7 held members in the country of El Salvador.

8 THE COURT: When you joined the gang and you  
9 participated in the racketeering activity of the gang,  
10 you did so knowingly and intentionally?

11 THE DEFENDANT: Yes.

12 THE COURT: And you obviously knew it was  
13 against the law.

14 THE DEFENDANT: Yes.

15 THE COURT: Does the government want me to  
16 put any other questions to Mr. Flores?

17 MS. GERACI: No, thank you, your Honor.

18 THE COURT: Can you summarize what the  
19 government's proof would be as to this count against  
20 Mr. Flores if he were to go to trial?

21 MS. GERACI: Yes, your Honor. If this case  
22 were to proceed to trial, the government would prove  
23 the defendant's guilt beyond a reasonable doubt through  
24 credible evidence, including witness testimony, for  
25 example the testimony of law enforcement witnesses who

1 responded to the scene of the Stacks murder.

2 Importantly, the testimony of several cooperating  
3 defendants who are former members of the MS-13 and who  
4 admitted to their own participation in this murder and  
5 pleaded guilty themselves, and who would describe the  
6 defendant's role in the murder and his drug-dealing  
7 activities on behalf of the MS-13, as well as detail of  
8 the existence of and the operations of the MS-13 as a  
9 criminal enterprise that affects interstate and foreign  
10 commerce.

11 To that end, Judge, we would show that the  
12 MS-13 is an international criminal organization whose  
13 top leaders live abroad, primarily in El Salvador,  
14 Guatemala, Mexico, and Honduras, and who direct the  
15 unlawful operations of the gang's members in the United  
16 States from there using cell phones and social media  
17 messaging. Membership in the gang, we would show, your  
18 Honor, is a lifelong commitment that includes  
19 participation in criminal activities, including  
20 murders, robberies, assaults, extortions, and drug  
21 trafficking.

22 We would show that the MS-13 enterprise has  
23 a hierarchy and rules, and that members must agree to  
24 attach chavales (ph) or members of rival gangs such as  
25 the Bloods, and that the MS-13 cliques raise funds

1 through street-level narcotics sales, and they maintain  
2 inventories of firearms, ammunition, machetes, knives,  
3 baseball bats, and other weapons to be used in assaults  
4 and murders, and that members pay dues to the clique  
5 treasurer, who uses the funds to purchase weapons, to  
6 wire money to MS-13 leaders in El Salvador, and to  
7 provide prison commissary money for assistance to MS-13  
8 members who are incarcerated or who have been arrested.

9 Finally, the MS-13, we would show, is  
10 organized into subgroups or cliques, and one of those  
11 cliques is the sailor's clique, which operates all over  
12 Long Island, including in the towns of Brentwood and  
13 Central Islip, among other locations, and that the  
14 defendant was a member of that clique.

15 Your Honor, with respect to the Stacks  
16 murder, we would put on expert witness testimony and  
17 expert reports such as from the Suffolk County Medical  
18 Examiner, who performed the autopsy of Stacks and who  
19 determined his manner of death as a homicide and his  
20 cause of death as multiple sharp-force trauma and  
21 multiple blunt-force trauma to his head as a result of  
22 the machete and bat injuries, as well as laboratory  
23 analysis of the narcotics seized in connection with  
24 this case. Additional evidence would include physical  
25 evidence obtained from the crime scene such as

1 photographs of the scene, and phone evidence, including  
2 telephone toll records and location information and  
3 cell-site records pertaining to certain participants in  
4 the Stacks murder, showing the communications between  
5 and among the coconspirators and some of their  
6 locations.

7           With respect to the substantive racketeering  
8 acts, your Honor, the government would show that on or  
9 about October 13<sup>th</sup> of 2016, in the vicinity of 231  
10 American Boulevard in Brentwood, which is within  
11 Suffolk County for venue purposes, that the defendant  
12 conspired with other sailors clique members to murder  
13 Stacks, who they believed was a member of the Bloods;  
14 that on the night of the murder, the defendant and his  
15 fellow clique members armed themselves with machetes  
16 and a baseball bat, and that they drove in two vehicles  
17 around Brentwood, hunting for rival gang members to  
18 attack and kill. When they spotted Stacks, believing  
19 him to be a member of the Bloods, they decided to kill  
20 him, and the defendant, who was armed -- the defendant  
21 and two other MS-13 members who were armed with  
22 machetes and a baseball bat got out of one of the cars  
23 and viciously attacked Stacks, beating and hacking him  
24 to death before fleeing the scene.

25           Finally, your Honor, with respect to the

1 racketeering act pertaining to drug dealing, the  
2 government would show that the defendant conspired with  
3 other sailors clique members to distribute narcotics,  
4 specifically marijuana and cocaine, in 2016 and 2017,  
5 that the defendant was a street-level dealer of these  
6 drugs with other members of the sailors click, and that  
7 the proceeds of the narcotics sales were returned to  
8 the sailors clique to support and fund additional MS-13  
9 activities.

10 THE COURT: Through that, you would be able  
11 to prove all the elements of the crime beyond a  
12 reasonable doubt to the jury?

13 MS. GERACI: Yes, your Honor.

14 THE COURT: All right, thank you for that  
15 detailed summary.

16 Mr. Flores, did you hear the prosecutor's  
17 summary of the facts as it relates to your guilty plea  
18 here today?

19 THE DEFENDANT: Yes.

20 THE COURT: Was that accurate?

21 MS. MARCUS: I think we wouldn't be in a  
22 position to dispute the government's evidence but I  
23 don't think all of it is within Mr. Flores' knowledge.

24 THE COURT: Right.

25 As it relates to you, Mr. Flores, was that

1 accurate? What she described as your involvement, was  
2 that accurate?

3 THE DEFENDANT: Yes.

4 THE COURT: I'm now going to formally take  
5 your plea. Mr. Flores, how do you now plead to Count 1  
6 of indictment 16-43 (S-7) charging you with violation  
7 of federal racketeering statute, including racketeering  
8 act 18(b), the murder of Dewan Stacks, and conspiracy  
9 to distribute cocaine and marijuana as set forth in  
10 racketeering act 21, how do you plead to that count,  
11 guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: Are you pleading guilty today  
14 because you are in fact guilty?

15 THE DEFENDANT: Yes, guilty.

16 THE COURT: Are you pleading guilty today  
17 voluntarily and of your own free will?

18 THE DEFENDANT: Yes.

19 THE COURT: Because you acknowledge that  
20 you're guilty as charged in Count 1 of the superseding  
21 indictment, because you know your rights and are  
22 waiving them, because your plea is entered knowingly  
23 and voluntarily and is supported by an independent  
24 basis in fact for each of the elements of the offense,  
25 I accept your guilty plea and I adjudge you guilty of

1 Count 1.

2 I just want to make clear with respect to  
3 the allocution and the elements, sometimes I ask the  
4 defendant and his counsel whether or not they dispute  
5 the government's ability to prove the interstate  
6 commerce element. I believe he allocuted to that by  
7 saying the money was sent to El Salvador. But in any  
8 event, I think it's clear, Ms. Marcus, that he's not  
9 disputing their ability to prove any of those elements,  
10 right?

11 MS. MARCUS: He is not, no.

12 THE COURT: We'll ask the Probation  
13 Department to prepare the presentence report.

14 MS. MARCUS: Your Honor, I would request to  
15 be present at any Probation interview.

16 THE COURT: Yes, that will be noted in the  
17 paperwork, that Ms. Marcus wishes to be present. Did  
18 you discuss among yourselves a time frame for the  
19 sentencing? Four months or so?

20 MS. MARCUS: I'm on trial -- back to back  
21 trials, but I think I will have to file a letter later,  
22 is that correct?

23 THE COURT: Usually, we set a date now but  
24 let me just ask -- hold on.

25 THE CLERK: As of now, we've set a date for

1 February 28<sup>th</sup> at 2:00 p.m.

2 THE COURT: Is that okay? Is that  
3 consistent with your -- obviously, it can always be  
4 adjourned if there's an issue.

5 MS. MARCUS: I will need additional time but  
6 in speaking with your deputy, I understood that I  
7 should -- there's a problem with the computer right now  
8 so I should make a request at a later time, which is  
9 fine.

10 THE COURT: I just like to have a date.

11 MS. MARCUS: February 28<sup>th</sup> is fine and then I  
12 will --

13 THE COURT: I have the calendar here so tell  
14 me what date would be good for you.

15 MS. MARCUS: I would request a date in May.

16 THE COURT: Okay. The government is okay  
17 with that?

18 MS. GERACI: Yes, your Honor.

19 MS. MARCUS: Towards the middle or end of  
20 the month.

21 THE COURT: Just give me one second. How  
22 about May 25<sup>th</sup> at 11:00 a.m.?

23 MS. MARCUS: Thank you.

24 THE COURT: Is there anything else today  
25 from the government?



1 MS. GERACI: No, thank you, your Honor.

2 THE COURT: Anything else from the defense?

3 MS. MARCUS: No, thank you.

4 THE COURT: All right, thank you very much.

5 Have a good day.

6 MS. MARCUS: Thank you, Judge.

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18 I certify that the foregoing is a correct  
19 transcript from the electronic sound recording of the  
20 proceedings in the above-entitled matter.  
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25 ELIZABETH BARRON

December 15, 2022